

Call Stoke-on-Trent (01782) 639716

Wills for Business Owners

A Guide provided by Rod Jones of Convenient Wills



Welcome

Thank you for requesting this guide.

This guide aims to show why a business owner needs a more complex Will than a non-business owner. The guide is one of a wide range of guides available from our web site www.convenient-wills.co.uk. I hope you find it helpful and informative.

This guide contains general advice. It is not intended as a replacement for receiving professional legal advice - which should be personalised to your specific needs.

We take great care to ensure the technical accuracy of this guide, however we do not accept any liability for any mistake, error, or omission from this guide. Nothing in the guide should be regarded as giving specific advice, and it should not be relied upon as a basis for any decision or action. We regret we cannot accept any responsibility or liability for any adverse outcomes for you or your family, no matter how caused.

Rod Jones

Rod Jones A.C.I.B.
Proprietor of **Convenient Wills**

Hyperlink Technology

All our downloadable guides and reports use hyperlink technology. This allows you, if you are reading the document direct from a computer with access to the Internet, to click on a hyperlink (indicated with blue, underlined text) and you will be taken through to the appropriate article.

Please note that the guide is not designed to be printed off; if you wish to print off the guide please [contact us](#) and we will send you an amended version.

We are Here To help

If after having read the guide you still have unanswered questions then please feel free to contact us by e-mail at info@convenient-wills.co.uk; we will endeavour to help you.

1 Market overview

Many business owners have standard 'simple' Wills. But a 'Business Owners Will' provides significant benefits for the business owners executors, and beneficiaries.

The purpose of this fact-sheet is to:

- demonstrate how easy it can be to make your business owner's Will;
- highlight the additional reasons why a business owner should make a Will; and
- help you to save you money - and provide a simple solution.

2 Business Ownership

This section explains:

- How the law is applied to the different types of business;
- The use of specific legal documents used in conjunction with your Will.

Sole Traders

Sole traders are, as the name implies, working by themselves for themselves. They are, in effect, the business!

The death of a sole trader usually represents the death of the business. The assets of the business and stock can be sold. Occasionally it is possible to sell the goodwill of the business too. Sometimes a sole trader will give their business to a family member or to a competitor (for a fee).

The personal representatives/executors of a sole trader do have an implied power (in the absence of any express provision in the deceased's Will) to continue the business in order to sell it as a going concern - but that power is limited (to realising the value of the business) and does not continue indefinitely.

Self Employed (employer)

'Self-employed' covers the sole trader (see above) and the business owner who has employees working for him/her.

The death of a self-employed employer does not necessarily signal the 'end' of the business; the business often has the potential to be sold or gifted - especially where the owner has successfully previously delegated the task of running the business to a manager in their absence. But this potential opportunity may not be available to the executors or administrators unless the business owners' Will includes the appropriate administrative powers.

The problem for most executors or administrators is that (as with a sole trader) their powers are limited to realising the value of the business within a short time frame. If market conditions are poor, and remain poor during that window of time, the end result can be that the business has to be sold for a 'knock-down' price - which in turn reduces pro-rata the amount the deceased's family inherits. Add to that the restriction that the executors can only use those assets already involved in the business at the date of the business owner's death and you can see the executors hands can be quite restricted.

Further, the executors are personally liable for any debts they incur - though they are indemnified from the deceased's estate if the purpose of continuing the business is just to realise the business.

A further problem is that a business owner's executors may not have the skills required to run the business; a better solution may be to appoint specialist executors to deal with the business affairs, and general executors to deal with the business owner's personal estate.

Partnerships

If no Partnership Agreement exists between the partners of a partnership then the partnership is terminated on the death of any partner - under the Partnership Act 1890. No 'if's, or but's'; that is the law! This applies no matter how long the partnership has been in existence. So, not only does the surviving partner lose a work colleague, they also lose their business.

If it is desired that the partnership would continue beyond the death of a partner, then a Partnership Agreement should be made.

The time to create the Partnership Agreement is when everything is working fine within the partners; this is because all interested parties will negotiate sensibly and agree to the terms. When things start not to work out (and this can be because of a breakdown in the relationship, or a partner's death) then it is every man for themselves; amicable agreement is hard to achieve and the end result can be costly law suits. A Partnership Agreement [made when all parties were at ease with each other] usually provides the legal framework from which a solution can be found, amicably.

The partnership agreement contains many of the aspects listed below with a shareholders agreement.

Solicitors charge significant fees for the preparation of these documents. We have a number of contacts who may be able to help you; please contact us to see if we can help you save money.

Company Directors

Ownership of a limited company is represented by a shareholding. On the death of a shareholder the company does not cease to exist - it is by law a separate legal entity.

Unless a document exists to the contrary (e.g. Pre-emption rights contained in the Articles of Association) the deceased's shares form a part of the deceased business-owner's estate and will be distributed in accordance with the 'Laws of Intestacy' if no valid Will was made, or in accordance with the deceased's Will if a valid Will was made.

This feature can have unexpected results. The deceased's surviving spouse can end up having the controlling share of the business. The deceased's spouse may have the same determination as their now deceased husband/wife - but they may not. Further, consider for a moment what might the consequences be if a fellow director passed away; could you end up working with their spouse?

It is often best to put into place a Shareholders agreement. For a family company this need not be particularly complex. For a company owned by two or more families then a more formal, and potentially complex, Shareholders agreement should be established.

A shareholders agreement sets out:

- the relationship of the parties to the agreement;
- their share of the company;
- how the business will be run;
- what happens if difficulties arise.
- the structure of the company;
- how it will be financed;
- who is on the board;
- what you can and cannot do with shares;
- what happens to the profits;
- protection of minority shareholders;
- what happens to the company if there is stalemate;
- how the venture can be terminated; and
- what the business and shareholders are allowed to do; and
- More, much much more.

Solicitors can charge significant fees for the preparation of these documents. Please contact us to see if we can help you save money.

Cross Option Agreements

The Partnership Agreement or Shareholder's Agreement should cover a wide range of topics. The most important one (from our viewpoint as estate planners) is the action required to be taken in the event of a death of a partner or shareholder. To avoid the

nightmare scenarios listed above (whereby control of the business vests with a surviving spouse) it is often agreed that the deceased's share will be 'bought out' by the remaining partners or shareholders.

The document that covers this situation is usually a **cross-option agreement** or occasionally referred to as a **double option agreement**. This legal agreement gives:

- a) the remaining Directors/partners the right to buy the shares; and
- b) gives the surviving spouse the right to sell their shares to the Directors/partners.

If the surviving directors/partners want to buy the deceased shareholder/partner's shares then the surviving spouse must sell them. Likewise, if the shareholding is offered to the surviving shareholder/partners by the deceased's surviving spouse then the shareholders/partners must buy. Because it is possible that neither party exercises their option there is no binding sale and business property relief for inheritance tax purposes is preserved.

The agreement needs to specify the method of valuing the shares and the time limit for exercising the options.

To provide the financial resources for these buy-out options life cover is usually required. Calculating how the premiums for this life cover is best 'shared', and maximising the tax breaks on these premiums, is the area of a specialist financial adviser. We can put you in touch with such a specialist adviser: [please contact us](#) for details.

Some life assurance companies will provide a specimen standard wording for a cross option agreements. It is still advisable for the parties to take legal advice to ensure that the agreement meets their requirements. It may be better to have a customised/bespoke agreement drawn up, even if that entails higher legal fees.

3 Business Property Relief (BPR) and Agricultural Property Relief (APR)

If certain conditions are met then a business may qualify for BPR and /or APR on the business owner's death. Relief is available at either 100%, 50%, or 0%.

We discuss inheritance tax, BPR and APR in our home visit will-writing service.

4 What Can A Will Do (for a business owner)?

In addition to the many reasons why adults in general should make a Will, a business owner has even more compelling reasons for doing so. For a business owner a professionally drafted Will could:

- grant additional powers to your executors - so they can:
 - continue to run the business instantaneously from the time of the testator's death (without a Will incorporating the necessary powers the executors would not be able to continue to run the business until Probate has been obtained. Obtaining Probate can take many months, by which time the business may have failed.)

- continue to run the business beyond the 12 month deadline (Unless the executors are granted the appropriate powers to continue running the business, the business must be wound up within 12 months of the death of the testator)
 - sell the business;
 - collect the monies owing to the business;
 - be paid where appropriate; and
 - be indemnified by the estate for any decisions they make;
- explain how your business is to be disposed of. NB. This may be superceded by prior documents (e.g. Partnership agreement) - and in which case your Will becomes your fallback document;
 - appoint specialist executors. Many people appoint their spouse, or family members, or their solicitor as their executors- and this may be satisfactory, but do the appointed persons have the skills, contacts, and drive to continue your business? Remember, your family will be mourning your loss. Sometimes it is better to choose other executors just to deal with your business assets; and
 - take advantage of the estate planning opportunities that making a business persons will provides e.g use of trusts.

Additional benefits are:

- the reduction the risk of lasting hardship for the business owner's family, their co-business owners, and their employees;
- Reduction in annoyance for their suppliers (who may otherwise be kept waiting a significant time before receiving any payment due to them); and
- protection of the value the business (many businesses become worthless where no Will was made because the business's reputation is damaged so badly by the delays and lack of communication;
- Increased inheritance for beneficiaries through the use of any tax breaks that are available. This includes Business Property Relief and Agricultural Property Relief. If care is not exercised these very valuable reliefs can be squandered.

5 Further Guides

We hope you have found this guide informative.

You may find the following additional guides helpful:

- [Why Make Your Will](#)
- ['Trusts, Traps and Wills'](#) -- which explains about the various types of trusts that can be included within a will. The inclusion of a trust within a will can provide very valuable additional benefits that are not available with a standard type of Will; and
- ['The Secrets Will-writers and Solicitors would prefer you not to know'](#) -- lists some of the clever marketing techniques used by solicitors and Will writers to entice you to use

their services as opposed to using a competitors' service - even though the competitor may provide better quality for lower costs.

More information and helpful, informative guides are available from our web site, or by calling us direct.

6 The Professional Solution

We would like to help you

We have significant experience in drafting Wills for business owners, and advising on business planning.

In addition we have a fixed transparent tariff so you can see how much our services will cost.

The fees for our Wills are set at a fixed fee - irrespective of how complex your circumstances are. This means that our prices for a simple Will are competitive with the rest of the market, but if your circumstances are complex then our services represent extremely good value for money.

If you need to make your Will we offer:

- A home visit will writing service; and
- A wills-by-Phone service

Both services provide you with a professionally drafted Will, at a very competitive price. For more details please call Rod on:

Convenient Wills
Protecting People & Property



Call Rod for
a free brochure

The Ugly Truth About Wills
A professionally drafted Will gives you and your family peace of mind. An out-of-date or non-existent Will does not.

Our home-visit service offers you:

- ✓ jargon-free advice that explains all the many aspects you should consider when making or updating your Will
- ✓ convenient home-visits
- ✓ flexible appointment times - including evening and weekends

We specialise in quality, low cost Wills and Lasting Powers of Attorney

Please call Rod Jones on **01782 639716**
or visit **www.convenient-wills.co.uk**
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